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Amnesia and the Defendant's Competency to Stand Trial: *Morrow v. State*, 293 Md. 247, 443 A. 2d 108 (1982)

by Barbara R. Gathright

Introduction and Background

Recently, in *Morrow v. State*, 293 Md. 247, 443 A.2d 108 (1982), the Court of Appeals of Maryland held that a defendant's amnesia does not compel a finding of incompetence. In the same opinion the court reflected a case-by-case approach to the issue of competency and disavowed a policy which requires a post-trial determination of the defendant's status. The court stated that amnesia need not affect the normal interplay between attorney and client, nor does it necessarily cause unfairness to the defendant. *Id.*

Joseph Morrow was driving on Belair Road when his car collided head-on into another vehicle. He sustained head injuries from the crash, and a passenger in his car died from injuries also sustained in the accident. Morrow was indicted on several charges, the most serious of which was manslaughter by automobile. Before trial Morrow requested and received a competency hearing based on his assertion that he suffered post-traumatic amnesia. The Circuit Court for Baltimore County adjudged Morrow competent to stand trial and found him guilty of manslaughter. The court of appeals granted certiorari to address the question of whether a defendant who cannot remember the facts of the incident for which he is charged is incompetent to stand trial. *Id.*

Amnesia is a memory disturbance characterized by total or partial inability to recall events from the past. T. Stedman, *Stedman's Medical Dictionary* 53 (24th ed. 1982). Post-traumatic amnesia, like that suffered by

Morrow, can follow a head injury. *Id.* It is generally accepted that everyone is amnesic to a certain degree. *Morrow v. State*, 293 Md. at 254, 443 A.2d at 112 (1982). Traditionally, the amnesiac condition has been viewed with great suspicion since the condition is easily feigned. W. Curran, A. McGarry and C. Petty, *Modern Legal Medicine, Psychiatry and Forensic Science* 795 (1980).

The origins of the amnesiac defendant's status at trial are rooted in common law considerations of competency. These considerations were codified by Congress in 1949 in 18 U.S.C. §4244. This statute, still in effect, established the test of competency to be whether the accused is "unable to understand the proceedings against him or properly to assist in his own defense." 18 U.S.C. §4244 (1976). Today almost all jurisdictions have a similar statute in force.

In *Dusky v. United States*, 362 U.S. 402 (1960), the United States Supreme Court interpreted the competency standard to mean "whether [the accused] has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational as well as factual understanding of the proceedings against him." This test is widely accepted as the modern constitutional standard to determine a defendant's competency to stand trial. R. Roesch and S. Golding, *Competency to Stand Trial* 11 (1980).

When the accused is an amnesiac, however, a minority of jurisdictions have adopted a different approach. In *Wilson v. United States*, 391 F.2d

460 (D.C. Cir. 1968), the court focused on the issue of "fairness" to the amnesiac defendant when it applied a six-factor test for competency that expanded the prevailing *Dusky* test. In *Wilson*, the defendant sustained a severe head injury prior to his arrest and had no memory of the incident for which he was indicted. The appellate panel reviewed the trial court's findings of competency and remanded the case for factual findings based on the following six-factor test: (1) the extent to which the amnesia effects the defendant's ability to consult with his lawyer; (2) the extent to which the amnesia affects his ability to testify on his own behalf; (3) whether the evidence can be extrinsically reconstructed; (4) whether the government has aided in this reconstruction; (5) the strength of the defendant's case; and (6) any other relevant facts or circumstances. *Id.* at 463-464. The court in *Wilson* also held that there must be a determination of the amnesiac's competence before and after trial. *Id.* at 463.

The Maryland Law

In 1888 the Court of Appeals of Maryland adopted the *M'Naghten* rule for determining both the sanity and the competency of the defendant. *Spencer v. State*, 69 Md. 28, 13 A. 809 (1888). The *M'Naghten* rule is derived from *M'Naghten's Case* [1843] 10 CL and Fin 200, 8 E.R. 718, which held that the defendant bears the burden of proving that he is unable to distinguish right from wrong and that he could not understand the nature and consequences of his act. This rule prevailed at common law until the Maryland General Assembly adopted the federal standard for determining competency. 1967 Md. Laws 709, (current version at Md. Health-General Code Ann. §12-101(c)(1982)). Although the language of the 1982 recodification varies slightly from its predecessor, the substance of the test remains the same: "whether such person is unable to understand the nature of the

object of the proceedings against him and to assist in his own defense." Cf. Md. Ann. Code art. 59, §23 (1979) and Md. Health-General Code Ann. §12-101(c) (1982).

The Court of Special Appeals of Maryland applied the competency test in *Strawderman v. State*, 4 Md. App. 689, 244 A.2d 888 (1968), cert. denied, 252 Md. 733 (1969). In *Strawderman* the court invalidated the *M'Naghten* rule and substituted the statutory language. The court determined that the tests for criminal responsibility and for competency were clearly different, thus bifurcating the insanity defense. The *Strawderman* decision clarified these two areas and established different standards of proof for each. *Id.*

In *Raithel v. State*, 280 Md. 291, 372 A.2d 1069 (1977), predating *Morrow*, the court of appeals focused on the trial judge's rulings in a competency hearing and reaffirmed the validity of the *Dusky* competency standard in this jurisdiction. (In Maryland, the competency of the defendant is determined in a formal hearing even though the language of the relevant statute requires only that "evidence presented on the record" be used by the court for its determination. Md. Health-General Code Ann. §12-102(a) (1982)). At a pre-trial hearing, the trial court in *Raithel* found the defendant competent to stand trial. Thereafter, a jury convicted him of first degree murder and other offenses. The court of appeals held that the trial court erred by failing to determine at the pre-trial competency hearing whether the defendant could assist in his own defense. This error was reversible error since both prongs of the *Dusky* test were not met. *Id.*

On only one occasion has a Maryland appellate court cited the *Wilson* six-factor test discussed earlier. See *James v. State*, 31 Md. App. 666, 358 A.2d 595, cert. denied, 278 Md. 725 (1976). In *James*, the defendant sought to utilize the six-factor test, but the Court of Special Appeals of Maryland distinguished *Wilson* and stated that the *Wilson* test applies



only when the defendant's amnesia is genuine; in *James* the defendant's loss of memory was either feigned or caused by an alcoholic black-out. *Id.*

Prior to the *Morrow* decision, Maryland courts followed the federal standards of *Dusky* and required a pre-trial hearing on the issue of competency; the divergent procedure and approach advocated in *Wilson* were not recognized. However, until *Morrow*, the competency of a defendant suffering from a genuine case of amnesia remained an issue of first impression in Maryland.

The *Morrow* Rationale

In determining whether an amnesiac defendant is competent to stand trial, the Court of Appeals of Maryland in *Morrow* relied on the policies that "amnesia is present to some degree in everyone" and that

the amnesiac defendant is realistically in no worse position than many other defendants who do not have important facts before them. Rebutting the procedure advocated by the Court of Appeals for the District of Columbia in *Wilson*, the Maryland court stressed the clear language of the applicable statute. *Morrow v. State*, 293 Md. 247, 443 A.2d 108 (1982).

The language of the statute, cited by the court as "a model of clarity," *Id.* at 255, 443 A.2d at 113, requires that the trial court determine the issue of competency prior to or during the trial if it appears to the court or if it is alleged by the defendant that the defendant is incompetent. See Md. Ann. Code art. 59, §23 (1979) (current version at Md. Health-General Code Ann. §12-102(a)(1982)). Furthermore, the court may, in its discretion, reconsider the competency issue at any time during the

trial and before the verdict is rendered. *Id.* The Maryland statute does not require a post-trial hearing on the competency question, nor does it advance the six-factor test of *Wilson*.

The Court of Appeals of Maryland found highly persuasive an Indiana case with a fact pattern similar to the facts of *Morrow*. See *Reagon v. State*, 253 Ind. 143, 251 N.E.2d 829 (1969), *cert. denied*, 397 U.S. 1042 (1970). In *Reagon* the defendant sustained an injury to his head which resulted in a genuine loss of memory. Supporting the determination that the defendant received a fair trial, the court of appeals in *Morrow* cited the *Reagon* rationale:

[m]any times in a trial of a criminal case evidence is lost, a material witness dies, or as in this case, the defendant has amnesia as to certain events or a time. Still, such handicaps from a defendant's point of view cannot prevent a trial from taking place eventually. Rarely would we find a case in which a defendant could not contend that he was deprived of some evidence and therefore he ought not to be tried.

Morrow v. State, 293 Md. at 254, 443 A.2d at 112 (1982).

Thus, while the *Wilson* six-factor test may be gaining acceptance in other jurisdictions, in Maryland the two-pronged competency test of *Dusky* continues to be the standard. Declining to take a case-by-case approach to the determination of an amnesiac's competency, the appellate court chose to follow the precise wording of the statute and to rely on the trial court's ability to properly apply the law so as to preserve the fairness of the trial.

Analysis of the *Morrow* Decision

Holding that *Morrow* received a fair trial, the court of appeals followed the mainstream of opinion on the competency issue. One argument in favor of this holding is the

presumption that amnesia may easily be feigned; therefore, the defendant's allegations of incompetence may not be worthy of elevation "to the dignity of legal incompetence." *Fajeriak v. State*, 520 P.2d 795, 801 (Alaska 1974). Another argument supporting the fair trial theory focuses on the problem of what to do with the amnesiac defendant. Public policy dictates that he should not be allowed to go free if there is a strong case against him. *State v. Pugh*, 117 N.J. Super. 26, 283 A.2d 537 (1971). Yet, it seems fundamentally unfair to allow commitment proceedings when the defendant has not been tried and found guilty. M. Guttmacher and H. Weihofen, *Psychiatry and the Law* 164-170 (1952).

The majority opinion in *Morrow* emphasized the ability of the defendant's counsel to adequately prepare a defense. The amnesiac defendant may maintain that he is unduly prejudiced by his memory loss because he cannot reconstruct the events that led to the charges against him. *Morrow v. State*, 293 Md. at 255, 443 A.2d at 113 (1982). However, in most cases the State's files are open to the defense, and this is considered by the courts to be enough to cancel any prejudice that might otherwise occur. The court in *Morrow* alluded to this open file policy and was thus apparently satisfied that the record reflected "full access, prior to trial, to information used by the State." *Id.* at 256, 443 A.2d at 114.

Application of the *Wilson* six-factor test probably would not have aided the defendant in *Morrow* because the test is essentially a balancing of two considerations. *Wilson* balances the inherent prejudice to the defendant with the strength of the case against the defendant, while taking into consideration whether the prosecution has cooperated in opening their files. In view of the strong circumstantial case against *Morrow*, the *Wilson* test probably would not have changed the outcome of the case.

The Court of Appeals of Maryland found the *Wilson* requirement

of a post-trial determination of competency to be unduly burdensome for the trial court. The Maryland statute permits the trial judge to conduct a hearing at any time until the verdict is rendered. This safeguard apparently satisfies the conscience of Maryland's highest court. A post-trial determination of the competency issue would be unnecessary for the trial court. The court of appeals has thus chosen to rely on the trial court's ability to protect the defendant's constitutional rights pursuant to the statutory procedure.

Conclusion

In *Morrow v. State*, the Court of Appeals of Maryland has followed the trend of its prior case law and joined the mainstream of opinion on the competency issue as it relates to the amnesiac defendant. A public policy argument based on practicality and expediency is one of several rationales. Public policy supports the notion that the amnesiac's situation is similar to that of other defendants who are tried without all of the evidence at their disposal. Additionally, the defendant's ability to reconstruct the evidence through information received from the State alleviates any unfairness.

While other jurisdictions evidenced a greater concern for the amnesiac's competency to stand trial than the Maryland courts, the *Morrow* decision stands for the proposition that the Maryland statute affords sufficient protection of the defendant's rights. Therefore, in Maryland, the defendant's competency can be questioned at any time prior to or during the trial. However, once the verdict is rendered, an amnesiac defendant must use the appellate process for further determination of that issue. Thus, the Court of Appeals of Maryland has accepted the rationale that the defendant may be entitled to a fair trial, but not a perfect one.